

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Wheeler Truck Equipment, Inc.
Highway 61
Morley, Missouri 63767

Respondent

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Docket No. CAA-07-2003-0249

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region VII (EPA) and Wheeler Truck Equipment, Inc., Highway 61, Morley, Missouri, (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b), 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the provisions governing State Operating Permit Programs,

and specifically the requirement to submit an annual Compliance Certification that identifies each deviation from the terms and conditions of the permit for the period of time covered by the certification pursuant to the Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Title V of the Clean Air Act, 42 U.S.C. § 7661, and that Respondent is therefore in violation of Section 502 of the Clean Air Act, 42 U.S.C. § 7661a. Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA , and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7.

4. The Respondent is Wheeler Truck Equipment, Inc., Highway 61, Morley, Missouri 63767. Respondent is an active Missouri corporation.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Subchapter V to the Clean Air Act, 42 U.S.C. § 7661, commonly referred to Title V, which establishes the minimum elements of a permit program to be administered by any air pollution control agency. Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), provides that the Administrator must promulgate regulations establishing the minimum elements of a permit program under Title V of the Clean Air Act.

6. Pursuant to the authority granted under Section 502(b) of the Clean Air Act, 42 U.S.C. § 7661a(b), the Administrator promulgated regulations providing for the establishment of Title V

permitting programs, effective July 21, 1992. The regulations subsequently have been amended and are codified at 40 C.F.R. Part 70.

7. Section 503(b) of the Clean Air Act, 42 U.S.C. § 7661b(b), provides that the regulations promulgated under section 502(b) of the Clean Air Act, 42 U.S.C. § 7661a(b), must require the permittee to periodically certify that the facility is in compliance with applicable requirements of the permit and to promptly report any deviations from the permit requirements to the permitting authority.

8. Pursuant to 40 C.F.R. § 70.6(a)(3)(iii)(B) each Title V permit must require prompt reporting of deviations from permit requirements.

9. Pursuant to 40 C.F.R. § 70.6(c)(5) each Title V permit must require the permittee to certify compliance with the terms and conditions contained in the permit.

10. Section 502(d) of the Clean Air Act, 42 U.S.C. § 7661a(d), provides that each state must submit to the Administrator a permit program meeting the requirements of Title V.

11. Section 502(a) of the Clean Air Act, 42 U.S.C. § 7661a(a), provides that it is unlawful for any person to violate any requirement of a permit issued under Title V of the Clean Air Act.

12. EPA promulgated final approval of the Missouri Title V program on June 13, 1997 and the program became effective on that date.

13. Missouri issued to Respondent a Title V permit on March 13, 2001, pursuant to the Missouri approved Title V permit program.

14. The Missouri approved Title V permit program requires that each permittee submit an annual compliance certification for the previous year on April 1st of each year.

Alleged Violations

EPA alleges that Respondent violated Section 502 of the Clean Air Act, 42 U.S.C. § 7661a, and the Missouri Air Conservation Regulation, 10 CSR 10-6.605, as follows:

15. Respondent is a person as defined by Section 302(e) of the Clean Air Act.
16. On September 17, 2002, the State of Missouri, Department of Natural Resources (MDNR) issued to Respondent a Notice of Violation for failure to submit an annual compliance certifications and semi-annual monitoring reports as required by Respondent's Title V permit.
17. Respondent did not submit its Title V permit compliance certification to EPA for the calendar year 2002.
18. Respondent's failure to submit a compliance certification violated the Missouri Air Conservation Regulation, 10 CSR 10-6.605, approved pursuant to Section 502 of the Clean Air Act, 42 U.S.C. § 7661a.

CONSENT AGREEMENT

19. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.
20. Respondent admits the factual allegations set forth above.
21. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.
22. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
23. Respondent agrees to submit an accurate compliance certification for calendar year 2002 to MDNR and EPA by July 15, 2003.

24. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth below.

25. Respondent understands that the failure to pay any portion of the civic penalty assessed herein in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of One Thousand Dollars (\$1,000), within thirty days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA-Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
Post Office Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check should be sent to:


Julie M. Van Horn
EPA-Region VII
Office of Regional Counsel
901 North Fifth Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

In the Matter of
Wheeler Truck Equipment, Inc.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By


Julie M. Van Horn
Senior Assistant Regional Counsel

Date

18 July 2003

RESPONDENT:
WHEELER TRUCK EQUIPMENT, INC.

By




Title

7/16/03 - Bookkeeper

Date

IT IS SO ORDERED. This Final Order shall become effective
immediately.

By


Karina Borromeo
Regional Judicial Officer

Date

July 21, 2003

IN THE MATTER OF Wheeler Truck Equipment, Inc., Respondent
Docket No. CAA-07-2003-0249

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Julie M. Van Horn
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Dana R. Lynch
Wheeler Truck Equipment, Inc.
22956 State HWY 61
Morley, Missouri 63767

Dated: 7/21/03



Kathy Robinson
Regional Hearing Clerk